IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.1566 OF 2005

Shri Vishwas Dhondiram Bhagat Petitioner

Vs.

The State of Maharashtra & ors. Respondents

Mr.Rajaram V. Bansode for petitioner.
Mr.D.R.More, APP for State.

CORAM: S.S.PARKAR & ANOOP V. MOHTA,JJ.

August 25, 2005.

ORAL ORDER:

1. Heard and perused the affidavit of the Investigating Officer dated 22nd August 2005 filed in this Court.

2. This petition has been filed by the father of the deceased whose death took place in the matrimonial house in Kurla, Bombay. She died due to hanging in her own house on 28/4/2005. Her parents are the residents of Kolhapur. The father had lodged the complaint on the night of 28th April 2005 alleging that his daughter's murder was committed. Crime was registered by the police and investigation commenced. After the investigation was completed the police filed the charge-sheet under Sections 306, 498-A read with Section 34 of IPC against six persons

including the husband and his other relations.

3. However, the father, not being satisfied with the charge-sheet having been filed for offence under Section 306 instead of for offence under Section 302 of IPC, has filed this petition seeking direction to register the offence under Section 302 read with Section 34 of IPC against respondent nos.4 to 9. The petitioner also prays for transfer of investigation to CBI or any other independent investigating agency.

4. On behalf of the respondent-State the Investigating Officer has filed affidavit dated 22nd August 2005. In the said affidavit it is stated that the cause of death as per the post-mortem report is asphyxia due to hanging. Reliance is also placed on the inquest panchanama as well as the post-mortem report wherein no injuries have been noticed except due to hanging of the body. On behalf of the Investigating Agency photographs of the victim while hanging with a saree on the ceiling fan in the matrimonial house as well as photographs taken when the body was lying after removing saree tied to the neck have been produced. From the photographs also no marks of violence or other injury except that of hanging can be noticed. We had also asked the learned Advocate appearing for the petitioner to himself see the inquest panchanama as well as the

post-mortem notes and the photographs to satisfy himself whether any marks of violence are apparent on the dead body.

5. The learned Advocate for the petitioner however contends that the death had taken place on 28th April 2005 but the divorce deed was recovered from the house of the accused by the police which is dated 19th April 2005. In that divorce deed some allegations are levelled against the deceased and on that ground the divorce deed was prepared which was signed in the presence of Notary. The argument advanced on behalf of the petitioner is that there was no question of keeping the deceased in the matrimonial house for a period of eight days when the divorce deed was executed between them. In the reply affidavit filed the Investigating Officer has stated that the police had recorded the statements of the Advocate as well as the witnesses and the Notary who had signed the deed of divorce. Of course it is a different thing that the parties could not have entered into such a divorce deed unless there was a custom to that effect prevalent in the family to obtain divorce by executing a private deed of divorce. But from the contents of the said divorce deed it cannot be said that inference can be drawn that the victim was murdered. Considering the material on record the police had filed the

charge-sheet for offences under Sections 306 and 498-A read with Section 34 of PC not only impleading the husband but other relations residing in the same house and two persons who were not inmates of the house. That is how six persons have been made accused in this case. The affidavit also states the reason why accused could not be arrested immediately after the incident as they had filed an application for anticipatory bail and they obtained the anticipatory bail. We, therefore, find no laxity on the part of the investigating agency in the investigation or in filing the charge-sheet for offence under Section 306 instead of for offence under Section 302 of IPC.

6. In the circumstances, there is no substance in the petition and, therefore, the same is rejected.

(S.S.PARKAR,J.)

(ANOOP V.MOHTA,J.)